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Supreme Court of the United States

OCTOBER TERM, 1935.

No. 268

THE SUGAR INSTITUTE, INC., THE AMERICAN SUGAR REFINING COMPANY, MARGARET A. JAMISON, *et al.*,

Appellants,

v.

THE UNITED STATES OF AMERICA,

Appellee.

MOTION BY APPELLANTS TO BE RELIEVED OF OBLIGATION OF PRINTING EXHIBITS

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Of Counsel.

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MOTION BY APPELLANTS TO BE RELIEVED OF OBLIGATION OF PRINTING EXHIBITS

This is a motion by Appellants to be relieved of the obligation of printing the vast number of exhibits enumerated in Appellee's "Designation of Additional Parts of the Record to be Printed", heretofore filed with the Clerk of this Court.

The Defendants in the above entitled action have appealed directly to this Court from a final decree of the District Court of the United States for the Southern District of New York in a proceeding brought by the United States to enjoin alleged violations of the Sherman Anti-Trust Law.

In the preparation of the record on appeal, Appellants have made every possible effort to comply with the provisions of Federal Equity Rules and the Rules of this Court designed to reduce to a minimum the length of the printed record on appeal. The seriousness of this effort

is perhaps best indicated by the fact that the original stenographic transcript of the oral testimony which was 10,550 pages in length has been reduced to a narrative statement covering only 807 pages, a reduction of more than 92%.

The record on appeal, as filed in this Court, includes approximately 2,400 separate exhibits ranging in length from one to several hundred pages. Of this number, approximately 400 exhibits were introduced by Appellants while the balance were offered in evidence by the Government. Efforts of the parties to arrive at an agreement upon a reasonable maximum number of exhibits to be printed were unsuccessful. The printing of the enormous volume of exhibit material desired by the Government would not only be costly in the extreme but would be a useless expenditure of money. It would not be practicable for this Court to examine even a small fraction thereof. It is further felt by Appellants that there would be no necessity or occasion for either party to ask the Court to make a specific examination of the vast majority of these exhibits themselves, all of which have been filed with the Court and hence may be cited or quoted to the fullest extent necessary in the briefs of the parties.

In view of Appellants' determination to apply to the Court to be relieved of the burden of printing the vast number of Government exhibits which the Government had indicated it would designate for printing, Appellants refrained from requesting the Clerk of this Court to print any of Appellants' exhibits. We felt that it would be unfair to proceed with the printing of even a small selected number of Appellants' exhibits and at the same time to ask this Court to be relieved of the burden of printing

those exhibits desired by the Government to be printed. Appellants' "Designation of Parts of the Record to be Printed", as filed with the Clerk of this Court, requested therefor the printing of the entire record on appeal as filed, with the exception of the exhibits. The printing thereof has now been completed at a cost to Appellants of over $3,000.

The "Designation of Additional Parts of the Record to be Printed", filed by the Government with the Clerk of this Court, calls for the printing in whole or part of approximately 1862 separate exhibits. In a letter to Appellants' counsel, dated August 6, 1935, the Government states:

> "The enclosed designation calls for the printing of 2619 pages of Government Exhibits, but inasmuch as several hundred pages of these exhibits consist of short telegrams, letters, etc. covering only a fraction of a page, and since numerous paragraphs have been stricken from other pages, it is estimated that the designation calls for the printing of less than 2400 pages."

An independent check indicates that the Government's estimate of 2400 pages of exhibits designated for printing is substantially correct. The cost to Appellants of printing the minimum number of thirty copies would be an additional $4,615, according to the estimate furnished by the Clerk of this Court on September 10th.

An exhaustive comparative review of those exhibits desired by the Government to be printed and those which the Government desires merely to be filed indicates that the following principle has been followed by the Government.

1. All exhibits which are in any way relevant to the case or to which the Government might conceivably wish to refer either in its brief or in the argument are required to be printed, regardless of the probable lack of necessity of examination by the Court of the great bulk of these exhibits.

2. As an exception to this general principle, the Government is willing to have filed and to waive the printing of (a) exhibits of extreme length, such as annual reports to stockholders, U. S. Tariff Commission and Federal Trade Commission reports, 850 pages of minute books, lengthy statistical compilations, etc.; (b) certain telegrams, letters and notices substantially identical with other exhibits desired to be printed; and (c) certain wholly unimportant and immaterial documents and parts of other documents desired to be printed in part.

It is submitted that no useful purpose would be served by the printing of the enormous volume of exhibits designated by the Government. The entire record on appeal, exclusive of these exhibits, is now contained in two large printed volumes, totalling slightly less than 1200 pages in length. The printing of 2400 additional pages of exhibit material desired by the Government would triple the size of the printed record, necessitating the preparation of at least four additional volumes containing material twice the length of the printed record in its present form. Obviously, it would be a practical impossibility for this Court to examine all or even a small portion thereof.

Since all of these exhibits have been filed with the Court, constitute part of the record on appeal and conse-

quently may be cited, referred to and quoted from as may appear necessary in the briefs or in oral argument, and since in the case of the great bulk of these exhibits it will be wholly unnecessary for the Court to refer thereto specifically, we believe that the granting of this motion cannot possibly prejudice the Government's position.

The Government has in its possession a complete set of all of those exhibits which it desires to be printed, so the granting of Appellants' motion would not handicap the Government in the preparation of its brief. Another complete set of these exhibits has been filed with the Court. With the present motion in mind, counsel for Appellants took particular pains in the preparation of the set of exhibits filed with the Court. In the great majority of cases, white photostatic copies have been furnished. All exhibits have been assembled in numerical order in a series of neat, clearly labelled folders with a convenient number of exhibits in each separate folder. Should it be necessary for the Court to refer to any particular exhibit commented on in the briefs, the original exhibit could be located in and removed from the file within the space of a few seconds. In the case of the two most important exhibits in the case, the Code of Ethics and Code Interpretations and the minutes of the Institute, ten copies have been prepared by Appellants and are being furnished for the use of the Court.

We could not expect nor shall we ask the Court to examine these exhibits for the purpose of determining which exhibits are unnecessary duplications and which are so clearly unimportant and irrelevant that the printing thereof would be wholly without purpose. In the ordinary case, even if the Decree of the Trial Court should be

affirmed, Appellants might, under paragraph 9 of Supreme Court Rule 13, recover the cost of printing any unnecessary portions of the record included therein at the instance of the Appellee. However, in this case, even if this Court should reverse in its entirety the decree of the Trial Court, Appellants would, of course, not be able to collect any costs whatsoever from Appellee, the United States.

In view of all of the considerations above referred to, Appellants appeal to this Court to be relieved of the burden of printing the exhibits in Appellee's Designation of Additional Parts of the Record.

Respectfully submitted,

SULLIVAN & CROMWELL,
Solicitors for Appellants.

JOHN C. HIGGINS,
Of Counsel.